



OFFICE OF THE CLERK OF THE CIRCUIT COURT OF COOK COUNTY

November 14, 2016

Honorable Toni Preckwinkle
Members of the Cook County Board of Commissioners
118 North Clark Street
Chicago, IL 60602

Dear President Preckwinkle and Members of the Board of Commissioners:

Please be informed that our General Counsel has reviewed Amendment 14, sponsored by Cook County Board Commissioners Suffredin, Garcia, and Arroyo, to the Cook County Board President's 2017 Budget recommendations, to eliminate specific positions in the Illinois Clerk of the Circuit Court's 2017 Budget.

As a result, it is our General Counsel's legal opinion that such a proposal to eliminate positions within our Office is unlawful pursuant to Illinois statute 725 ILCS 105/27.3. Please see the enclosed letter from our General Counsel, dated November 14, 2016.

Sincerely,


Dorothy Brown
Clerk of the Circuit Court

Cc: Wasiu Fashina, Chief of Staff



OFFICE OF THE CLERK OF THE CIRCUIT COURT OF COOK COUNTY

November 14, 2016

Honorable Dorothy Brown
Clerk of the Circuit Court of Cook County
Richard J. Daley Center, Suite 1001
Chicago, Illinois 60602

RE: Proposed Amendment from Commissioner Garcia, Commissioner Arroyo and
Commissioner Suffredin to Eliminate Positions in the Illinois Clerk of the Circuit
Court's Office of the Inspector General

Dear Clerk Brown:

I am writing in response to the proposed amendment from Commissioners Garcia, Arroyo and Suffredin to eliminate the Clerk of the Circuit Court's Inspector General's Office, as well as the Inspector General position. Since such a move implicates separation of powers issues under the Illinois Constitution and interferes with the inherent authority of the courts, I am writing to inform you that such an amendment would be unlawful.

It is well-settled law that the Illinois Clerks of Court have exclusive control over their personnel matters, including collective bargaining, and that the County's authority over the Clerk's Office is limited to appropriation of lump-sum amounts for the use of the Clerk's Office.¹ Since the majority of the investigations performed by the Inspector General and the related investigators are related to

¹ *Orenic v. Illinois State Labor Relations Board*, 127 Ill.2d 453, 479 (1989) ("clerks of circuit courts are nonjudicial members of the judicial branch of State government and are not county officers. . .The retained power of the courts includes power to 'require production of the facilities, personnel and resources reasonably necessary' to the courts' operations. . . [N]ot only are nonjudicial employees of a court the employees of a State agency rather than of a county, but even the counties' salary-setting and facilities-providing function is subject to the courts' own ultimate power to ensure reasonable adequacy"); *Carlson*, 116 Ill.2d at 200; *Kotche v. County Board of Winnebago County*, 87 Ill.App.3d 1127, 1131 (2nd Dist. 1980) ("Section 27.3 of the clerks of courts act gives the board the authority to appropriate funds for clerk hire, but does not empower the board to control the hiring, firing, promotion, or compensation of the deputy clerks hired by the clerk of the circuit court pursuant to statute . . . The wording of the statute indicates that the clerks retain the authority to use the provided funds for the internal operation of their offices and the board's grant of authority is limited to appropriation of necessary funds"); *Kilhafner v. Harshbarger*, 245 Ill.App.3d 227, 229 (3rd Dist. 1993) ("the Clerks of Courts Act gives the circuit clerk the power to hire and fire deputies. Pertinent case law reveals that although the chief judge may exercise general control over the circuit clerk's office and although the county board may control the pay of the deputies, the circuit clerk is the employer of the deputies"); 705 ILCS 105/27.3, Compensation ("The county board shall provide the compensation of Clerks of the Circuit Court, and the amount necessary for clerk hire, stationery, fuel and other expenses"); 1984 Ill. AG LEXIS 18.

personnel matters, and are therefore, under the exclusive control of the Clerk of the Circuit Court, as held by the Illinois Supreme Court in *Orenic*, 127 Ill.2d at 479:

the Illinois Constitution ... does not contemplate nor does it authorize the exercise of any control over or permit the imposition of a burden on the judicial branch by any local entity. . . [A] county board's effective veto of the courts' employment of needed personnel would violate not only the separation of powers but also the inherent authority of the courts.

The Commissioners' proposed amendment to eliminate a department within the Clerk's Office, to control personnel decisions within the Clerk's Office and suggestion that the Cook County Inspector General could investigate the personnel of the Clerk's Office is unlawful and violates the Illinois Constitution. As quoted above, the Illinois Supreme Court held that local entities do not have the authority to exercise any control over the Illinois Clerks Office nor do they have the authority to impose a burden on members of the judicial branch of State government.

Since the core American principal of separation of powers cannot be violated to achieve the otherwise commendable goals intended by this proposed amendment, I urge you to ask the County Commissioners to oppose this proposed amendment.

Please contact me at (312) 603-6946 with any questions or concerns.

Sincerely,



Kelly Smeltzer
General Counsel

cc: Wasiu Fashina, Chief of Staff
Michael Moore, Executive Clerk for Court Operations and Administration
Richard Abrams, Chief Financial Officer